

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 10

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH PAUL SINGLETON

Appeal No. 2003-1119
Application 09/756,588

ON BRIEF

Before COHEN, FRANKFORT, and McQUADE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 8, all of the claims in this application.

Appellant's invention is directed to a dual sleeved sock (Fig. 1) including an inner cuff (15) and a foldable outer cuff (40) wherein the inner cuff is held against the wearer's leg and operates in an identical manner to conventional socks, while the outer cuff is adapted to be folded down over the top of the wearer's boot and boot laces to prevent the entry of dirt, rocks, ticks, insects and the like into the boot (Fig. 2). Independent claim 1 is representative of the subject matter on appeal and a copy of that claim can be found in the Appendix to appellant's brief.

The prior art references relied upon by the examiner in rejecting the appealed claims are:

Meengs et al. (Meengs)	2,578,895	Dec. 18, 1951
Kearns	4,513,589	Apr. 30, 1985

Claims 1 through 4 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Meengs.

Claims 5 through 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Meengs in view of Kearns.

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Rather than attempt to reiterate the examiner's full commentary with regard to the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding the rejections, we make reference to the final rejection (Paper No. 4, mailed August 27, 2001) and the examiner's answer (Paper No. 7, mailed February 20, 2002) for the reasoning in support of the rejections, and to appellant's brief (Paper No. 6, filed December 27, 2001) for the arguments thereagainst.

On page 4 of the brief, appellant has indicated that claims 1 through 4 form "a first group of claims that can stand or fall together," while claims 5 through 8 form "a second group claims that stand or fall together."

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of

our review, we have made the determination that the examiner's above-noted rejections will be sustained. Our reasons follow.

Looking first to the rejection of claims 1 through 4 under 35 U.S.C. § 102(b) as being anticipated by Meengs, we note that independent claim 1 is directed to a sock comprising an inner cuff; and foldable outer cuff. As noted by the examiner in both the final rejection and the examiner's answer, Meengs discloses a sock (1) comprising a foot portion (2) and a leg portion (3), wherein the leg portion includes an inner cuff (4) and an outer cuff or guard sleeve (5). As can be seen in Figure 2 of Meengs the inner cuff (4) is held against the wearer's leg and operates in the manner of a conventional sock, while the outer cuff or guard sleeve (5) is adapted to be folded down over the top of the wearer's boot and boot laces.

In the brief (pages 4-5), while appellant has mentioned dependent claim 3, we note that appellant has made no argument or comment directed specifically to independent claim 1 or dependent claims 2 and 4. Since appellant has made no argument regarding the examiner's position with respect to independent claim 1, and since we agree with the examiner's assessment that claim 1 is

anticipated by Meengs, we will sustain the rejection of claim 1 under 35 U.S.C. § 102(b).

In light of appellant's grouping of claims 1 through 4 together as noted on page 4 of the brief, we would be justified in concluding that claims 2 through 4 should be considered to fall with claim 1, from which they depend. However, since appellant has also separately mentioned claim 3 in the brief (page 4), we feel compelled to address that claim separately. Claims 2 and 4, however, are considered to fall with claim 1 and the examiner's rejection of those claims is accordingly sustained.

As noted on page 4 of the brief, claim 3 adds the requirement that the leg-covering portion of appellant's sock include the foldable outer cuff "formed integrally therewith." In both the final rejection (page 4) and the answer (page 4) the examiner has contended that the inner and outer cuffs of the sock seen in Meengs are part of the leg portion (3) and are integrally formed. Appellant has provided no argument to the contrary. Our reading of the very short specification of Meengs and review of Figures 1-5 of the drawings therein bears out the examiner's

position. Accordingly, we will also sustain the examiner's rejection of claim 3 under 35 U.S.C. § 102(b).

The next rejection for our review is that of claims 5 through 8 under 35 U.S.C. § 103(a) as being unpatentable over Meengs in view of Kearns. In this instance, the examiner recognizes that Meengs does not teach the use of elastic yarns in the selvage makeup of the outer cuff or guard sleeve of the sock therein and concludes, based on the teachings of several rounds of elastic yarn (E) in the decorative edge or cuff (15) of the sock in Kearns (Fig. 4), that it would have been obvious to one of ordinary skill in the art at the time of appellant's invention to provide the selvage area of the outer cuff (5) of Meengs with elastic yarns as shown in Kearns in order to increase the elasticity of the outer cuff portion and thereby maintain the outer cuff taut against the remainder of the sock (final rejection, page 3).

While appellant's brief (pages 5-7) mentions certain case law regarding obviousness and appears to broadly urge that there is no suggestion as to the desirability of any modification of the references to describe the present invention, we find no

specific argument regarding any of claims 5 through 8 on appeal or the examiner's findings with respect to the teachings of Kearns, and no cogent rationale as to why the examiner's conclusion of obviousness based on the collective teachings of Meengs and Kearns is in error. 37 CFR § 1.192 (c) (8) (iv) requires, for each rejection under 35 U.S.C. § 103, that appellant specify the errors in the rejection, identify the specific limitations in the rejected claims which are not described in the prior art relied upon, and explain how the limitations in question render the claimed subject matter unobvious over the prior art, this appellant has not done. Thus, we conclude that the examiner's position on the obviousness of the claimed subject matter as a whole as defined in claims 5 through 8 on appeal has not been challenged with any reasonable degree of specificity.

Since we agree with the examiner that it would have been obvious to one of ordinary skill in the art at the time of appellant's invention, based on the collective teachings of Meengs and Kearns, to provide the selvage area of the outer cuff (5) of Meengs with several rounds of elastic yarn in order to increase the elasticity of the outer cuff portion and thereby

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maintain the outer cuff taut against the remainder of the sock when positioned as in Figure 1 of Meengs and taut against the boot when the outer cuff or guard sleeve is folded over the boot top as shown in Figure 2 of Meengs, we will sustain the rejection of claim 5 under 35 U.S.C. § 103(a).

In accordance with appellant's grouping of claims 5 through 8 on page 4 of the brief, we conclude that claims 6 through 8 will fall with claim 1 and note that the examiner's rejection of those claims under 35 U.S.C. § 103(a) is likewise sustained.

As is apparent from our above determinations, the decision of the examiner rejecting claims 1 through 4 of the present application under 35 U.S.C. § 102(b) is affirmed, as is the examiner's decision rejecting claims 5 through 8 under 35 U.S.C. § 103(a).

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No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

AFFIRMED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
CHARLES E. FRANKFORT)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
JOHN P. McQUADE)	
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